



DEPARTMENT OF JUSTICE

Office of the Attorney General

[A.G. Order No. 5453-2022]

Clarifying Lawful Overseas Use of Data Act; Attorney General Certification and Determination

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: In accordance with the Clarifying Lawful Overseas Use of Data Act (“CLOUD Act”) relating to an executive agreement governing access by a foreign government to electronic data, notice is given that on December 15, 2021, the Attorney General certified his determination that the laws of the Government of Australia and the Agreement between the Government of the United States of America (“U.S.” or the “United States”) and the Government of Australia on Access to Electronic Data for the Purpose of Countering Serious Crime (the “U.S.-Australia CLOUD Agreement” or “Agreement”) satisfy the requirements of the CLOUD Act. On December 22, 2021, the Attorney General submitted a written certification of his determination to Congress.

DATES: The U.S.-Australia CLOUD Agreement will enter into force not earlier than June 20, 2022, unless Congress enacts a joint resolution of disapproval, in accordance with the CLOUD Act, and after the United States and Australia have exchanged diplomatic notes indicating that each country has taken the steps necessary to bring the agreement into force.

FOR FURTHER INFORMATION CONTACT: Richard Downing, Deputy Assistant Attorney General, Criminal Division, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001, email: Criminal.Division@usdoj.gov, phone: 202-514-2000.

SUPPLEMENTARY INFORMATION:

The CLOUD Act, Public Law 115-141, Div. V, 132 Stat. 1213–25 (2018), lifts certain restrictions under U.S. law on companies disclosing electronic data, in response to qualifying, lawful orders in investigations of serious crime, directly to a qualifying foreign government with which the United States has entered into an executive agreement governing access by the foreign government to covered data. 132 Stat. at 1213–17.

Before such an agreement can go into effect, the Attorney General, with the concurrence of the Secretary of State, must determine that the considerations outlined in 18 U.S.C. 2523(b) have been met. The Attorney General must then submit a written certification of his determination to Congress, including an explanation of each consideration required by 18 U.S.C. 2523(b), not later than 7 days after the date on which the Attorney General certifies the executive agreement. 18 U.S.C. 2523(d)(1). The executive agreement will enter into force not earlier than 180 days after the date the Attorney General notifies Congress, unless Congress enacts a joint resolution of disapproval, in accordance with the CLOUD Act, 18 U.S.C. 2523(d)(2), and after the United States and Australia have exchanged diplomatic notes indicating that each country has taken the steps necessary to bring the agreement into force.

Under 18 U.S.C. 2523(g), the Attorney General’s determination or certification under 18 U.S.C. 2523(b) must be published in the Federal Register as soon as is reasonably practicable.

Determination and Certification Pursuant to Section 2523(b)

On December 15, 2021, the Minister for Home Affairs of Australia and the Attorney General of the United States signed the U.S.-Australia CLOUD Agreement. A copy of the U.S.-Australia CLOUD Agreement is available at: <https://www.justice.gov/dag/cloudact>. On December 15, 2021, the Attorney General certified his determination that the laws of the Government of Australia and the U.S.- Australia CLOUD Agreement satisfy the requirements of 18 U.S.C. 2523(b). The Attorney General’s determination was based on the considerations in paragraphs (1), (2), (3), and (4) of 18 U.S.C. 2523(b), as explained in the “Explanation of each consideration in determining that the Agreement satisfies the requirements of 18 U.S.C. §

2523(b),” available at: <https://www.justice.gov/dag/cloudact>. Secretary of State Blinken concurred with the Attorney General’s determination.

Notification to Congress Pursuant to Section 2523(d)

The Department of Justice transmitted the U.S.-Australia CLOUD Agreement certification to Congress December 22, 2021. The Attorney General provided the certification to the Senate Committee on the Judiciary, the Senate Committee on Foreign Relations, the House Committee on the Judiciary, and the House Committee on Foreign Affairs. The U.S.-Australia CLOUD Agreement will enter into force not earlier than June 20, 2022, unless Congress enacts a joint resolution of disapproval, in accordance with 18 U.S.C. 2523(d), and after the United States and Australia have exchanged diplomatic notes indicating that each country has taken the steps necessary to bring the agreement into force.

Non-reviewable Determination and Certification

In accordance with 18 U.S.C. 2523(c), the determination and certification by the Attorney General described in this notice are not subject to judicial or administrative review.

Dated: June 24, 2022.

Merrick B. Garland,
Attorney General.

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